546.

SUPREME COURT OF THE UNITED STATES.

No. 94.

JOHN TAYLOR ET AL., PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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UNITED STATES, *sct:*

[L. S.] The President of the United States to the judges of the circuit court of the United States, holden in and for the eastern district of Pennsylvania, in the third circuit, greeting:

Because that, in the record and process, and also in the rendering of judgment, in a suit before you, or some of you, between the United States of America and John Taylor, jr., and William Blackburne & company, claimants of twenty-five cases of cloths, fifteen cases of cassimeres, one case of cloths and cassimeres, and twenty-four pieces of pilot cloths, seized at the store of W. Blackburne & Co., a manifest error has intervened to the great damage of the said claimants, as in their complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf:

You are hereby commanded, that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States on the second Monday in January next, at the city of Washington, being the seat of National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Washington, this tenth day of November, in the year of our Lord one thousand eight hundred and forty-one, and of the independence of the United States the sixty-sixth.

FRA. HOPKINSON, *Clerk Cir. Court.*

Allowed by HENRY BALDWIN.

UNITED STATES, *Eastern district of Pennsylvania, sct:*

To the United States of America:

Whereas, by a writ of error issuing out of the Supreme Court of the United States, directed to the judges of the circuit court of the United States holden in and for the eastern district of Pennsylvania, in the third circuit, wherein John Taylor, jr., and William Blackburne & Co. are the plaintiffs, the said judges are directed to send the record and process of a certain suit, with all things concerning them, so that the same may be had before the chief justice and associate justices of the Supreme Court of the United States on the second Monday in January next, at the city of Washington, being the seat of National Government, in which suit the United States of America were original plaintiffs, and the said John Taylor, jr., and William Blackburne & Co., claimants

of certain cases and pieces of cloths and cassimeres, and pilot cloths, seized at the store of William Blackburne & Co., were defendants, in a plea by way of information for forfeiture; that the record and process aforesaid being inspected, they, the said Supreme Court, may cause to be done thereupon what of right ought to be done. And the said John Taylor, jr., and William Blackburne & Co. having made an assignment of errors, and given good and sufficient security that the plaintiffs in error shall well and truly prosecute their said writ of error to effect, and answer all such costs as, upon an affirmance of the judgment of the said circuit court, may be adjudged to the defendants in error:

You are hereby cited to appear (if you see cause) at the said Supreme Court, at the time and place aforesaid, to answer to the said writ of error and the errors assigned by the said John Taylor, jr., and William Blackburne & Co., plaintiffs in error.

Given under my hand and seal this tenth day of November, in the year of our Lord one thousand eight hundred and forty-two.

ARCH. RANDALL. [SEAL.]

UNITED STATES, *Eastern district of Pennsylvania, sct:*

[L. S.] The President of the United States to the judge of the district court of the United States in and for the eastern district of Pennsylvania, greeting:

Because that, in the record and process, and also in the rendering of judgment in a suit before you, between the United States of America and William Blackburne & Co. and John Taylor, jr., claimants of certain cases and pieces of cloths and cassimeres, and pilot cloths, seized at the store of William Blackburne & Co., a manifest error has intervened to the great damage of the said claimants, as in their complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf:

You are hereby commanded, that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, on the twelfth day of October next, at Philadelphia, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Philadelphia, this sixth day of July, A. D. one thousand eight hundred and forty, and in the sixty-fifth year of the independence of the said United States.

FRA. HOPKINSON, *Clerk Cir. Court.*

Allowed by JOS. HOPKINSON, *Dist. Judge, &c.*

UNITED STATES, *Eastern district of Pennsylvania, sct:*

To the United States of America:

Whereas, by a writ of error issuing out of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, to the judge of the district court of the United States in and for the eastern district of Pennsylvania directed, wherein William Blackburne & Co. and John Taylor, jr., are the complainants, the said judge is directed to send the record and process of a certain suit, with all things concerning them, so that the same may be had before the judges of the said circuit court on the twelfth day of October next, at Philadelphia, in which suit the said United States of America were original plaintiffs, and the said William Blackburne & Co. and John Taylor, jr., claimants of certain cases and pieces of cloths and cassimeres, and pilot cloths, seized at the store of Wm. Blackburne & Co., that the record and process aforesaid being inspected, the said circuit court may cause to be done thereupon what of right ought to be done. And the said William Blackburne & Co. and John Taylor, jr., having made an assignment of errors, and given good and sufficient security to prosecute their said writ of error to effect, and answer all damages and costs if they fail to make good their plea:

You are hereby commanded to appear (if you see cause) at the said circuit court, at the time and place aforesaid, to answer to the said writ of error and the errors assigned by the said William Blackburne & Co. and John Taylor, jr.

Given under my hand and seal this sixth day of July, A. D. 1840, and in the sixty-seventh year of the independence of the said United States.

JOS. HOPKINSON, *Dist. Judge.* [SEAL.]

Pleas before the honorable the judge of the district court of the United States in and for the eastern district of Pennsylvania, at Philadelphia. It is thus contained:

In the district court of the United States of America in and for the eastern district of Pennsylvania.

EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

Be it remembered, that on this thirtieth day of September, in the year of our Lord one thousand eight hundred and thirty-nine, into the district court of the United States of America in and for the eastern district of Pennsylvania, comes John M. Read, attorney of the said United States of America, and prosecuting in their name and on their behalf, and gives the said court here to understand and be informed that, on the twenty-first day of August, in the year aforesaid, at the city of Philadelphia, in the eastern district of Pennsylvania, and within the jurisdiction of this court, the following goods, wares, and merchandise, to wit, twenty-five cases of cloths, fifteen cases of cassimeres, one case of cloths and cassimeres, and twenty-four pieces of pilot cloths, were

seized on land by, and are now in the custody of, George Wolf, esquire, collector of the customs of the port and district of Philadelphia, in the said eastern district of Pennsylvania, as being forfeited for the causes hereinafter mentioned, to wit:

1. For that the said goods, wares, and merchandise, being of foreign growth, produce, and manufacture, were, on divers days and times after the first day of November, one thousand eight hundred and thirty-six, and before the seizure thereof as aforesaid, brought in some vessel or vessels to the said attorney as yet unknown, from some foreign port or place to the said attorney as yet unknown, into some port or place of some district of the United States to the said attorney as yet unknown; and the said goods, wares, and merchandise, being so brought as aforesaid, afterwards, between the first day of November, one thousand eight hundred and thirty-six, and the seizure aforesaid, were, from time to time, unladen and delivered from the said vessel or vessels in which the same had been brought as aforesaid within the United States, to wit, at some port or place of the district aforesaid, without any permit or special license whatever from the collector or naval officer, or any other competent officer of the customs of the port or district where the same were so unladen and delivered, for such unlading or delivery, against the form of the act of Congress in such case made and provided.

2. And also, for that the said goods, wares, and merchandise, being of foreign growth, produce, and manufacture, were, on divers days and times after the said first day of November, in the year of our Lord one thousand eight hundred and thirty-six, and before the seizure thereof as aforesaid, brought in some vessel or vessels to the said attorney as yet unknown, from some foreign port or place to the said attorney as yet unknown, to the port of the city of New York, in the collection district of the city of New York, in the southern district of New York; and the said goods, wares, and merchandise, being so brought as aforesaid, afterwards, between the said first day of November, one thousand eight hundred and thirty-six, and the seizure aforesaid, were, from time to time, unladen and delivered from the said vessel or vessels in which the same had been brought as aforesaid within the United States, to wit, at the said port of the city of New York, in the said collection district of the city of New York, within the said southern district of New York, without any permit or special license from the collector or naval officer, or any other competent officer of the customs of the said port or district of the city of New York, for such unlading or delivery, against the form of the act of Congress in such case made and provided.

3. And also, for that the said goods, wares, and merchandise, being of foreign growth, produce, and manufacture, and being subject to duties by the acts of Congress of the United States, were, after the first day of November, in the year of our Lord one thousand eight hundred and thirty-six, and before the seizure aforesaid, brought into the United States, and being so brought as aforesaid, afterwards, to wit, on the day of the seizure aforesaid, were found concealed in a certain store in the occupation of William Blackburn and company, in Church alley,

in the city of Philadelphia, at the port of Philadelphia, in the eastern district of Pennsylvania aforesaid, the duties on the said goods, wares, and merchandise not having been before that time paid, or secured to be paid, against the form of the act of Congress in such case made and provided.

And the said attorney, in the name and on behalf of the said United States, further gives the said court here to understand and be informed, that afterwards, to wit, on the said twenty-first day of August, in the year of our Lord one thousand eight hundred and thirty-nine, at the city of Philadelphia, in the said eastern district of Pennsylvania, and within the jurisdiction of this court, certain other goods, wares, and merchandise, to wit, twenty-five other cases of cloths, fifteen other cases of cassimeres, one other case of cloths and cassimeres, and twenty-four other pieces of pilot cloths, were seized on land by, and are now in the custody of, George Wolf, esquire, collector of the customs for the port and district of Philadelphia, in the said eastern district of Pennsylvania, as being forfeited for the causes hereinafter mentioned, to wit:

That the last mentioned goods, wares, and merchandise are of the growth, produce, and manufacture of some foreign place or country to the said attorney unknown, and were heretofore, to wit, on divers days and times after the first day of November, one thousand eight hundred and thirty-six, and before the seizure thereof as aforesaid, brought and imported in some vessel or vessels to the said attorney as yet unknown, from a foreign port or place to the said attorney as yet unknown, to the port of the city of New York, in the collection district of the city of New York, in the southern district of New York, which said last mentioned goods, wares, and merchandise are subject to the payment of duties to the United States on being brought and imported as aforesaid.

4. That entries of the said last mentioned goods, wares, and merchandise, duly signed, were, at the times of the several importations thereof, made at the office of the collector of the customs of the said port and district of the city of New York, and that on each of the said several entries being made as aforesaid, an invoice of the goods, wares, and merchandise included in such entry was produced and left with the said collector of the customs of the port and district of the city of New York.

And the said attorney further avers, that the said last mentioned goods, wares, and merchandise, which were so entered as aforesaid, and of which invoices were so produced and left as aforesaid, were not invoiced according to the actual cost thereof at the place of exportation, but, on the contrary, were in fact invoiced at less sums than the actual cost thereof at the place of exportation, with design to evade the duties thereupon, or some part thereof, against the form of the act of Congress in such case made and provided.

5. That the said last mentioned goods, wares, and merchandise, being subject to the payment of ad valorem duties to the United States, entries thereof, duly signed, were, at the times of the second importations thereof, made at the office of the collector of the customs of the said port and district of the city of New York, and that on each of the

said several entries being made as aforesaid, an invoice of the goods, wares, and merchandise included in such entry was produced and left with the said collector of the customs of the said port and district of the city of New York.

And the said attorney further avers, that all and each of the said second invoices so produced and left as aforesaid, and all and each of the several packages in each and every of the said several invoices so produced and left as aforesaid, in which the said last mentioned goods, wares, and merchandise were so imported and entered as aforesaid, were made up with intent, by a false valuation, to evade and defraud the revenue of the United States, against the form of the act of Congress in such case made and provided.

6. That the said last mentioned goods, wares, and merchandise, being subject to the payment of ad valorem duties to the United States, entries thereof, duly signed, were, at the times of the several importations thereof, made at the office of the collector of the customs of the said port and district of the city of New York, and that on each of the said several entries being made as aforesaid, an invoice of the goods, wares, and merchandise included in such entry was produced and left with the said collector of the customs of the said port and district of the city of New York.

And the said attorney further avers, that all and each of the said several invoices, so produced and left as aforesaid, were made up with intent, by a false valuation, to evade and defraud the revenue of the United States, against the form of the act of Congress in such case made and provided.

7. That the said last mentioned goods, wares, and merchandise, being subject to the payment of ad valorem duties to the United States, entries thereof, duly signed, were, at the times of the several importations thereof, made at the office of the collector of the customs of the said port and district of the city of New York, and that on each of the said several entries being made as aforesaid, an invoice of the said goods, wares, and merchandise included in the said entry was produced and left with the said collector of the customs of the said port and district of the city of New York.

And the said attorney further avers, that all and each of the said several packages contained in each and every of the said entries so made, and in each and every of the invoices so produced and left as aforesaid, on which the last mentioned goods, wares, and merchandise were so imported and entered as aforesaid, were made up with intent, by a false valuation, to evade and defraud the revenue of the United States, against the form of the act of Congress in such case made and provided.

8. That the said last mentioned goods, wares, and merchandise, being subject to the payment of ad valorem duties to the United States, entries thereof, duly signed, were, at the time of the several importations thereof, made at the office of the collector of the customs of the said port and district of the city of New York; and that on each of the said several entries being made, as aforesaid, an invoice of the goods,

wares, and merchandise included in such entry was produced and left with the said collector of the customs of the said port and district of the city of New York.

And the said attorney further avers, that all and each of the said several invoices so produced and left, as aforesaid, were made up with intent, by a false extension, to evade and defraud the revenue of the United States, against the form of the act of Congress in such case made and provided.

9. That the said last mentioned goods, wares, and merchandise, being composed wholly or in part of wool or cotton, entries thereof, duly signed, were, at the times of the several importations thereof, made at the office of the collector of the customs for the port and district of the city of New York; and that on each of the said several entries being made, as aforesaid, an invoice of the said last mentioned goods, so as aforesaid composed wholly or in part of wool or cotton, included in such entry, was produced and left with the said collector of the customs of the said port and district of the city of New York.

And the said attorney further avers, that all and each of the several packages in each and every of the said several invoices so produced and left as aforesaid, and in each and every of the said several entries so made as aforesaid, in which the said last mentioned goods were so imported as aforesaid, were made up with intent to evade and defraud the revenue of the United States, against the form of the act of Congress in such case made and provided.

And the said attorney, in the name and on behalf of the United States, further gives the said court here to understand and be informed, that afterwards, to wit, on the said twenty-first day of August, in the year of our Lord one thousand eight hundred and thirty-nine, at the city of Philadelphia, in the said eastern district of Pennsylvania, and within the jurisdiction of this court, certain other goods, wares, and merchandise, to wit, twenty-five other cases of cloths, fifteen other cases of cassimeres, one other case of cloths and cassimeres, and twenty-four other pieces of pilot-cloths, were seized on land, and are now in the custody of George Wolf, esquire, collector of the customs for the port and district of Philadelphia, as being forfeited for the causes hereinafter mentioned, to wit: that the last mentioned goods, wares, and merchandise are the growth, produce, and manufacture of some foreign place or country to the said attorney unknown, and were heretofore, to wit, on divers days and times after the first day of November, one thousand eight hundred and thirty-six, and before the seizure thereof as aforesaid, brought and imported in some vessel or vessels to the said attorney as yet unknown, from a foreign port or place to the said attorney as yet unknown, into the port of the city of New York, in the collection district of the city of New York, in the southern district of New York, which said last mentioned goods, wares, and merchandise were subject to the payment of duties to the United States as being brought and imported as aforesaid.

10. That entries of the said last mentioned goods, wares, and merchandise, duly signed, were, at the times of the several importations

thereof, made at the office of the collector of the customs of the said port and district of the city of New York; and that on each of the said several entries being made, as aforesaid, an invoice of the goods, wares, and merchandise included in said entry was produced and left with the said collector of the customs of the port and district of the city of New York.

And the said attorney further avers, that the said last mentioned goods, wares, and merchandise, which were so entered as aforesaid, and of which invoices were so produced and left as aforesaid, were not invoiced according to the actual cost thereof at the place of exportation, but, on the contrary, were in fact invoiced at less sums than the actual cost thereof at the place of exportation, with design to evade the duties thereupon, or some part thereof, against the form of the act of Congress in such case made and provided.

11. That the said last mentioned goods, wares, and merchandise, being subject to the payment of ad valorem duties to the United States, entries thereof, duly signed, were, at the times of the several importations thereof, made at the office of the collector of the customs of the said port and district of the city of New York; and that on each of the said several entries being made, as aforesaid, an invoice of the goods, wares, and merchandise included in such entry was produced and left with the said collector of the customs of the said port and district of the city of New York.

And the said attorney further avers, that all and each of the said several invoices so produced and left, as aforesaid, were made up with intent, by a false valuation, to evade and defraud the revenue of the United States, against the form of the act of Congress in such case made and provided.

12. That the said last mentioned goods, wares, and merchandise, being subject to the payment of ad valorem duties, entries thereof, duly signed, were, at the times of the several importations thereof, made at the office of the collector of the customs of the said port and district of the city of New York; and that on each of the said several entries being made, as aforesaid, an invoice of the goods, wares, and merchandise contained in the said entry was produced and left with the said collector of the customs of the said port and district of the city of New York.

And the said attorney further avers, that all and each of the said several packages contained in each and every of the said entries so made as aforesaid, and in each and every of the said invoices so produced and left as aforesaid, in which said last mentioned goods, wares, and merchandise were so imported and entered as aforesaid, were made up with intent, by a false valuation, to evade and defraud the revenue of the United States, and against the form of the act of Congress in such case made and provided.

13. That the said last mentioned goods, wares, and merchandise, being composed wholly or in part of wool or cotton, entries thereof, duly signed, were, at the times of the several importations thereof, made at the office of the collector of the customs of the said port and district

of the city of New York; and that on each of the said several entries being so made, as aforesaid, an invoice of the said last mentioned goods, so as aforesaid composed wholly or in part of wool or cotton, included in such entry, was produced and left with the said collector of the customs of the said port and district of the city of New York.

And the said attorney further avers, that all and each of the several packages in each and every of the said several invoices so produced and left as aforesaid, and in each and every of the said several entries so made as aforesaid, in which the said last mentioned goods were imported as aforesaid, were made up with intent to evade and defraud the revenue of the United States, against the form of the act of Congress in such case made and provided.

By reason of all which, the premises and the acts of Congress in this behalf made and provided, the said goods, wares, and merchandise have become and are forfeited. Wherefore the said attorney prays the aid and advice of the said court here in the premises, and due process of law for the condemnation thereof.

JOHN M. READ,
U. S. Attorney for the eastern district of Pennsylvania.

And thereupon process according to law was ordered and allowed by the said court, and issued agreeably to such order and allowance.

John Taylor, jr., late of the city of New York, but now absent from the United States, by Edward Henry Bradbury, his attorney in fact, comes and claims the said goods, wares, and merchandise in the said information and libel mentioned as his property; (subject to the repayment of a certain advance or loan of sixty thousand dollars and upwards, thereon made to him by William Blackburn & Co.;) and the said John Taylor, jr., by his said attorney, alleges that, at the time of the seizure aforesaid, he was, and yet is, the true and lawful owner of the said goods [wares] and merchandise subject as aforesaid.

JOHN TAYLOR, Jr.,
Pr. pro E. H. BRADBURY.

Oct. 10, 1839.

Edward Henry Bradbury being duly sworn says, the facts above set forth are just and true, to the best of my knowledge and belief. I am the duly authorized attorney in fact of the above named John Taylor, jr. He was absent from the United States at the time *of* the seizure of the above mentioned goods, wares, and merchandise was made, and has ever since continued, and still is, absent from the United States.

E. H. BRADBURY.

Sworn, October 11, 1839, before me.

PTR. CHRISTIAN, *Ald'n.*

William Blackburn & Co. claim the said goods, wares, and merchandise in the said libel and information mentioned, as the sole property of them, the said Wm. Blackburn & Co., for the purpose of securing and paying an advance or loan thereon made by them to John Taylor, jr.,

of sixty thousand dollars and upwards; for securing which said loan or advance, the said goods [wares] and merchandise were delivered to them long before the said seizure by the said John Taylor, jr., in whose possession they were as his property, and remained in their possession as aforesaid at the time of said seizure, without any notice or knowledge on their part that there was any allegation whatever that the same had not been duly imported, and the duties paid or secured; or that the same were on any account liable to seizure, and under the full and entire belief on their part that the said goods [wares] and merchandise had been duly imported and entered, and the duties thereon paid or secured according to law. WM. BLACKBURNE & CO.

Oct. 10, 1839.

Francis Blackburne being duly sworn says, I am a member of the firm of William Blackburne & Co., mentioned in the foregoing claim. The facts stated in the foregoing claim are just and true, to the best of my knowledge and belief. The said firm of William Blackburne & Co., at and before the time of the seizure of the goods and merchandise mentioned in the said information and libel, was composed of William Blackburn, Francis Blackburne, Christopher John Blackburne, and Charles F. Shaw; since that time the said Charles F. Shaw has retired from said firm, and is no longer a member thereof.

FRS. BLACKBURNE.

Sworn, Oct. 11, 1839, before me.

PTR. CHRISTIAN, *Ald'n.*

And now, , comes John Taylor, jr., and, by leave of the court first had, withdraws so much only of his claim heretofore filed in this case as relates to 43 ps. of cloths, part of the goods above-mentioned, and on behalf of James Buckley, claims 29 pieces of cloth, part of said 43 pieces, as the property of the said James Buckley, and on behalf of John W. Bradbury, claims 14 pieces of cloths, the residue of the said 43 pieces, as the property of the said John W. Bradbury; and the said John Taylor, jr., says, that the said Buckley and Bradbury are respectively the true, sole, and lawful owners of the respective parcels of cloth herein above claimed for them respectively, and, so being the owners, respectively consigned the said several parcels to the said John Taylor, jr., who, as their consignee and factor, at the time of the seizure aforesaid, held, and is still entitled to hold, the same subject to the repayment of the advances made thereon by William Blackburne & Co., in whose actual possession they then were. And the said John Taylor, jr., further says, that the said Buckley and Bradbury are both resident in England, and were, at and before the time of said seizure, and now are, absent from the United States.

JOHN TAYLOR, Jr.

John Taylor, jr., being duly sworn, says, that the facts above set forth are true to the best of his belief. JOHN TAYLOR, Jr.

Sworn and subscribed before me, February 12, 1840.

WILLIAM MILNOR, *Alderman.*

And now comes the said John Taylor, jr., for himself and in behalf of James Backley and John W. Bradbury, and saving and reserving all benefit and advantage of the manifold defects and inconsistencies of the said information and libel, and protesting that the same, and the matters therein contained, are wholly insufficient, and that he is not bound by law to answer thereto; nevertheless, for answer to the same, he saith, that he was, at and before the time of the seizure, and still is, the true and sole owner of all the goods, wares, and merchandise, in the said information and libel mentioned, except 43 pieces of cloth, of which 29 pieces were, and are, the sole property of James Backley, and the remaining 14 pieces were, and are, the sole property of John W. Bradbury; that at the time of the seizure therein mentioned, the said goods, wares, and merchandise, were in the possession of William Blackburne & Co., as factors of the respondent, and that said William Blackburne & Co. had, before that time, and after the said goods were entered and permitted by the collector of New York, lent and advanced to this respondent a large sum of money, to wit, the sum of sixty thousand dollars and upwards, on the said goods, wares, and merchandise, and, for the repayment of which sum, they lawfully held the said goods, wares, and merchandise, as security. And the respondent, further answering, denies each and every of the allegations of fact, in the said information and libel contained and set forth, and avers that they are all wholly untrue. And the said respondent further says, that the said libel and information omits to mention or set forth by whom, or under whose authority, the said goods, wares, and merchandise were seized, which omission the respondent is advised and insists renders the said libel and information bad, demurable, and insufficient; and the respondent prays, that he may have the same advantage as if he had demurred thereto for the said cause.

And the said John Taylor, jr., for himself and on behalf of said Buckley and Bradbury, further answering, says, that he and they are grievously vexed by the proceedings in this case, and that unjustly, because, he says, that before the time of said seizure, all the said goods, wares, and merchandise, were imported by him into the port of New York, entered and left with the collector of said port, the said goods, wares, and merchandise, submitted for appraisement by the public appraisers of said port, duly authorized for that purpose, and that the duties thereupon demanded by the collector of said port were paid by the said Taylor, and permits thereupon granted by the said collector, or other authorized officer or officers; under and by virtue of which, said goods, wares, and merchandise were unladen and delivered from the respective vessels in which the same had been imported, or from the custom-house stores in which they had been placed. That the packages in which said goods, wares, and merchandise had been so imported, were, after such unlading and delivery, and before the time of said seizure, delivered by said Taylor to the said William Blackburne & Co., as his factors, and the sum hereinbefore mentioned advanced by them to him upon the same, and the said packages broken up, and part of said goods not

repacked, and the residue repacked in new and different packages, and in the same packages with new and different marks and numbers; and the said goods, wares, and merchandise had thus, before the time of said seizure, become part of the mass of merchandise in the country. And the said John Taylor, jr., is advised and believes that, under the above recited circumstances, the said goods, wares, and merchandise were not in law liable to seizure for the causes set forth in said information and libel, or any of them; and the said John Taylor, jr., further answering, says, that the said goods, wares, and merchandise were not lawfully seized. Wherefore, &c., and that the said goods, wares, and merchandise may be redelivered to him, &c.

JOHN TAYLOR, Jr.

Sworn and subscribed before me, February 12, 1840.
WILLIAM MILNOR, *Alderman.*

And the said attorney of the United States, by way of replication to said plea, and answer of said John Taylor, junior, for himself and others therein named, doth aver, that the matters in said plea and answer are not true in fact, and sufficient in law to bar the forfeiture aforesaid; and that the matters contained in the said libel of information are true in fact, and sufficient in law to maintain a decree of forfeiture, according to the prayer thereof; of all which matters, he is ready to make due proof as the court will direct, (and this he prays may be enquired of by the country, &c.) And the said John Taylor, jr., does the like.

And the said attorney of the United States, by way of replication to said plea and answer of said William Blackburne & Co., doth aver, that the matters in the said plea and answer are not true in fact, and sufficient in law to bar the forfeiture aforesaid, and that the matters contained in the said libel of information are true in fact, and sufficient in law to maintain a decree of forfeiture according to the prayer thereof; of all which he is ready to make due proof as the court will direct, (and this he prays may be enquired of by the country, &c.) And the said William Blackburne & Co. do the like.

Therefore, let a jury thereupon come before the said judge, at Philadelphia aforesaid, on the seventeenth day of February next, by whom, &c., and who neither, &c., to recognise, &c., because as well, &c.

The same day is given to the parties aforesaid, then and there, &c.

On which said seventeenth day of February, A. D. eighteen hundred and forty, came the parties aforesaid, by their attorneys aforesaid, and now, in the same session, to wit, on the tenth day of March, in the year last aforesaid, the jurors of the jury aforesaid, being called, likewise come, to wit:

Andrew Fleek,	Richard G. Laning,
David Boyd,	Jonathan Miller,
Henry Schell,	Hugh Catherwood,
Charles V. Hagner,	Daniel Moore,
Richard Mackey,	Frederick Schober,
John J. Krider, and	Thomas Roney,

who, being duly impannelled, returned, chosen, tried, and sworn or affirmed to speak the truth of the matter within contained, upon their oaths and affirmations aforesaid, respectively do say, that they find for the claimants on the first and second counts of the information—and for the United States on the remaining eleven counts.

Whereupon, afterwards, to wit, on the first day of June, in the year last aforesaid, it is considered and adjudged, that the said twenty-five cases of cloths, fifteen cases of cassimeres, one case of cloths and cassimeres, and twenty-four pieces of pilot cloths, in the information mentioned, be, and the same are forfeited, for the causes in the said eleven counts of the said information set forth.

Be it remembered, that on the A. D. 1839, came John M. Read, esq., attorney of the United States, into the district court of the district of Pennsylvania, and filed an information against twenty-five cases of cloths, &c. (Prout information.) Whereupon, John Taylor, jr., and William Blackburne & Co. entered their claims and filed their answers to the said information. (Prout claims and answers.) And thereupon issue was joined between them. And afterwards, to wit, at a session of said court held at the city of Philadelphia, before the honorable Joseph Hopkinson, judge of the said court, on the tenth day of March, A. D. 1840, the aforesaid issue between the said parties came to be tried by a jury of the said district for that purpose duly impannelled. (Prout list of jurors.) At which day came as well the said plaintiff as the said defendants, by their respective attorneys, and the jurors of the jury aforesaid, impannelled to try the said issues, being also called, came, and were then and there in due manner chosen, and sworn or affirmed to try the said issue; and upon the trial, the several matters and things mentioned in the charge of the court, hereto annexed, as having been given in evidence, were respectively given in evidence by the counsel on each side, in order to support the issue on their part respectively. And the counsel of the said plaintiffs, to support and prove the issue on their part, called as witnesses John J. Logue, George Gideon, and William Cairns, who, being respectively sworn on their voir dire, testified that they went to Blackburne's store, and there assisted in making the seizure of the goods mentioned in the said information; the said Logue and Gideon stating that they were, at the time of making said seizure, inspectors of the customs in the district of Philadelphia, and the said Cairns stating that he was, at the time of making said seizure, an inspector of the customs in the port of New York. Whereupon, the said defendants objected to the admission of said Logue, Gideon, and Cairns severally, as witnesses for the plaintiffs, they being interested in the event of the case. But the learned judge overruled the said objections and admitted the said witnesses, to which admission the defendants then and there excepted; and the said Logue, Gideon, and Cairns were thereupon severally sworn and examined on behalf of the plaintiffs, and proved the facts attending the seizure of the goods, and that certain original marks on packages containing the said goods had been erased, and among them the mark [B]F, which was originally upon one of said packages.

In the course of the examination of the said witnesses, the following papers were produced and given in evidence, being the affidavit, warrant, and authority under which the seizure of the said goods *were* made, viz: A list of the goods seized, (prout the same;) affidavit of William Cairns, (prout the same;) warrant of Alderman Milnor, (prout the same;) authority from George Wolf, esq., Collector of the port of Philadelphia, (prout the same.) It was also proved, that the greater part of said goods were seized in an apartment in the second story of the house No. 26 Church alley, adjoining the house No. 24 Church alley, which apartment was occupied by the house No. 24 Church alley, into which a doorway had been cut, the communication between said apartment and the remainder of the house No. 26 Church alley being closed.

The counsel of the United States, further to prove the issue on their part, offered in evidence the bill of lading, entry, and owner's oath, taken on the 16th of July, 1839, in the month preceding the seizure of the goods in question, of nineteen cases of goods, (not part of the goods seized,) marked [B]F 1 *a* 19, (prout the same.) To all which the said defendants objected; but the learned judge overruled the objection, and admitted the same in evidence. Whereupon the said papers were read in evidence.

The counsel of the United States, further to prove the issue on their parts, offered evidence to prove that William Blackburne & Co. had, in January, 1839, imported certain invoices (no part of the goods seized) into Philadelphia, and had entered them at the custom-house there; that the goods so imported had been appraised above the invoice prices; that the importers had acquiesced in such appraisement; and that Francis Blackburne thereupon stated that he had passed 140 cases at New York at similar prices, and would cease importing goods here; the counsel stating that this was to be followed by evidence to show that he never did import into New York in his own name. All which evidence was objected to by the defendants, but was admitted by the court, to which the defendants then and there excepted; and the said evidence was thereupon given. And the plaintiffs further proved the admission of the defendant Taylor, that the said mark [B]F was the mark of said defendant Francis Blackburne, and that said Taylor, as the agent of said Blackburne, had paid freight at New York for packages of goods imported there with that mark; and further proved that no importations had been made at that port in the name of said Francis Blackburne, or of said William Blackburne & Co., previously to the summer of 1839, but that large importations had been made there in the name of the claimant, John Taylor, jr. It was proved that the goods seized had been imported into New York, and entered and passed there, and the duties thereupon paid, (prout invoices and entries, &c.;) but it was no part of the evidence or case of the United States, that there had been any fraud or connivance on the part of the officers of the custom-house of New York with the importers of said goods.

Plaintiffs' counsel, further to support the issue on their parts, offered to prove, by John Siter, a witness, (who had been an importer of and dealer in cloths and kerseymeres,) that he had examined and appraised the goods in question at Philadelphia, at the instance of the officers of Government, and that they were, in his judgment, undervalued in the invoices.

The counsel for defendants objected to this evidence, on the ground that the goods, having been appraised by the official appraisers of the custom-house of New York, who had adopted the value as stated in the invoice, and the goods having passed through the custom-house on and by that appraisement, according to which the duties had been estimated and paid, and, upon the payment, been delivered to the owners, and that there having been no fraud or connivance on the part of the officers of the custom-house at New York with the importers of the said goods, no evidence could be received on the part of the United States to disclaim or contradict that appraisement, or to show that the goods were of a greater or different value, but that that appraisement was final and conclusive against the United States, in this or any other proceeding. But the objection was overruled by the court, and the evidence admitted; to which defendants then and there excepted. Whereupon the evidence was given.

The counsel of the United States then moved the court for leave to amend the 10th, 11th, 12th, and 13th counts of the information, by inserting the words "New York" instead of the words "places unknown," referring to the place of importation. To which amendment the defendants objected. But the amendment was allowed by the judge; to whose decision defendants then and there excepted. Whereupon the information was amended accordingly.

The counsel of the United States then moved for leave further to amend the information, by inserting, in the 1st, 2d, and 3d counts, the word "by," so as to make the said counts describe George Wolf as the seizor of the goods. To which amendment the defendants objected. But the said amendment was allowed by the judge; to whose decision the defendants then and there excepted. Whereupon the information was amended accordingly.

Abraham I. Lewis was examined as a witness on behalf of the United States; and having stated that his firm were importers of cloths and kerseymeres, and that he had thereby a knowledge of their quality and value, he was asked, on cross-examination, to state the extent of the importations of his firm; and in reply, said: "Formerly, we imported large quantities of woollens; for three, four, or five years past, we have imported but a few packages annually." Whereupon the counsel of the United States, on re-examination, proposed the following question, viz: "Was there anything in the state of the market which caused the alteration which you have mentioned, in the amount imported by you within four or five years last past?" To which question the defendants objected. But the judge allowed the question to be put, saying, the question may have a bearing on the case, &c.; that it was but follow-

ing out the question on the cross-examination. To which decision the defendants then and there excepted. Whereupon the said question was put to the witness, and answered by him.

The counsel for the United States examined, as a witness on their part, Thomas Stewart, who proved that he had been, many years prior to, and was at the time of the trial, an appraiser of the port of Philadelphia. And the counsel of the United States then offered to prove, by said witness, that he had examined the goods mentioned in the information, in the custom-house at Philadelphia, and his judgment of their value. To which evidence of the value of the goods the defendants objected, on the ground that the witness was one of the Government appraisers of the port of Philadelphia, in addition to the objection taken to the testimony of Mr. Siter, to wit, that the appraisement made at New York was conclusive. But the court overruled the objection, and admitted the evidence; to which decision the defendants then and there excepted. Whereupon the evidence was given.

The counsel of the United States further offered to prove, by the oath of David Gardiner, that certain goods marked [B]F, which had been imported into New York in the ship Eutaw, being the same on which defendant Francis Blackburn was alleged to have paid the freight as aforesaid, were still in the custom-house at New York. To which the defendants objected. But the judge overruled the objection, and admitted the evidence; to which decision the defendants then and there excepted. Whereupon the said evidence was given.

The counsel of the United States further offered in evidence an invoice of merinoes (not part of the goods mentioned in the information) bought of Abel Shaw, entered in Philadelphia by Wm. Blackburn & Co., by ship Franklin, on the 19th August, 1839, marked [B]F, 35 *a* 53, (prout the same,) offered as strengthening the evidence of the ownership of packages with this mark. To which the defendants objected. But the judge admitted the evidence; to which decision the defendants then and there excepted. Whereupon the said invoice was read in evidence.

At the request of the defendants' counsel, and by order of the court, the goods mentioned in the information were all brought into court, for the purpose of being examined.

And the counsel of the United States, in rebutter, offered in evidence invoices of Blackburn, Taylor, and Okie & Robinson, to show the absence of any such custom as to the allowance of 5 p. c. for measurement, as had been testified to by the witnesses on the part of the defendants. Which evidence was objected to by the defendants. But the objection was overruled by the court, and the said evidence was admitted; to which decision the defendants then and there excepted. Whereupon said invoices were read. (Prout the same.)

The defendants produced and examined John Robinson, of the firm of Okey & Robinson, and Robert Walker, to prove an alleged usage of trade, in England, to make a discount or allowance of 5 per cent. for measure on cloths and cassimeres; said Robert Walker being cross-ex-

amined, several invoices of his own importations into the port of New York were shown to and verified by him; and the said invoices were placed by plaintiffs' counsel in the hands of the counsel of the defendants, and one of said invoices was read by the counsel of the United States to the jury. The counsel of the United States, pending this cross-examination, offered to read to the jury a letter from one Waite to the witness, which accompanied and was annexed to one of the said invoices, and left therewith in the New York custom-house, on which the goods had been entered, and referring to the said invoice, (prout letter and invoice.) The reading of which letter in evidence was objected to by defendants. But the court admitted the same to be read to the jury; to which decision the defendants' counsel excepted. Whereupon the said letter was read in evidence.

And the counsel of the United States further offered in evidence the several invoices, which had been shown to defendants' witness, Robert Walker, during his cross-examination, and had been verified by him, of goods consigned to and imported by said Robert Walker into New York; the said invoices having been shown to the counsel for the claimants, and one of them read to the court and jury, without objection on the part of the claimant to any of them; which being objected to by defendants, the judge said that he considered them to be already in evidence, inasmuch as one had been read to the jury, and the others shown to the witness Walker, verified by him, and shown to the counsel of the defendants, and all were offered for the same purpose, and that the papers should be considered in evidence. To which decision the defendants then and there excepted. Whereupon the said invoices were read to the jury. (Prout the same.)

And the learned judge charged the jury. (Prout charge.)

And thereupon the defendants' counsel excepted to the said charge generally, and to every part thereof; and in addition to said general exception, and without prejudice thereto, specified the following exceptions, to wit:

That the learned judge, in his said charge, instructed the jury—

1. That the whole proceeding in the seizure of the goods in question was, and substantially, in conformity with the act of Congress. (Prout charge.)

2. That the objections made to the proceedings are immaterial to the issue now trying. (Prout charge.)

3. That the entry of the goods at New York, their appraisement at the custom-house there, the payment of the duties according to that appraisement, and the delivery of the goods thereupon to the importers, were not conclusive against the United States in this case.

4. That the revenue acts mentioned in this information are not strictly penal laws. (Prout charge.)

5. That the duties on the goods were not paid within the meaning of the 68th section of the act of 1799, (although they had been passed at the custom-house of New York, and the duties there assessed upon them had been paid, according to the value and prices in the invoice,)

if the jury should be of opinion that they were not invoiced at their fair and true cost and value. (Prout charge.)

6. That the provision of the 66th section of the act of 1799, mentioned in the charge, (prout charge,) was not repealed.

7. That under the act of 1830, when a package or invoice has been made up with intention to defraud, the package or invoice (that is, the goods contained in the invoice) are forfeited.

8. That the probable cause mentioned in the 7th section of the act of 1799, is not a cause existing and known to the persons by whom the seizure was made, antecedent to the seizure, and which was the warrant and ground of the proceedings. The probable cause intended by the act has no reference to the seizure, but to the *trial*. There must be probable cause for the *prosecution*, not for the *seizure*, and the court is to judge of it by what appears to the court—by what comes to the knowledge of the court on the trial of the prosecution. (Prout charge.)

9. That the United States have shown probable cause for the prosecution, and that the onus probandi was thrown upon the claimants.

10. That it was not necessary to affirm or deny the doctrine that there can be but one official appraisement of the goods, and that that must be made in the custom-house at which the goods were entered.

11. That the first step in the inquiry whether the goods are invoiced at their actual cost, is to ascertain what was their actual cost; and how has this been done on the part of the United States? By certain appraisements made, in the first place, by official appraisers of the custom-house of this city; and further, by private appraisers, selected for that purpose. If the opinions of Messrs. Stewart and Simpson (the official appraisers at the port of Philadelphia) have not the authority of an official appraisement or act, they have, nevertheless, the weight of the judgment of men accustomed to other goods of this description, and who, from the appointment, as well as their experience, may be presumed to have competent knowledge and skill in ascertaining their value. In this light the jury may consider their evidence, and give credit to it accordingly.

And thereupon, the counsel for the said claimants did then and there except to the aforesaid charge and opinions of the said court; and inasmuch as the said charge and opinions, so excepted to, do not appear upon the record, the said counsel for the said claimants did then and there tender this bill of exceptions to *to* the opinion of the said court, and requested the seal of the said judge aforesaid should be put to the same, according to the form of the statute in such case made and provided.

And thereupon, the aforesaid judge, at the request of the said counsel for the claimants, did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided.

JOS. HOPKINSON. [L. S.]

And now, to wit, at a circuit court of the United States, holden at Philadelphia, in and for the eastern district of Pennsylvania, in the third cir-

cuit, this cause came on to *to* be heard on the transcript of the record from the district court of the United States, for the eastern district of Pennsylvania, and was argued by counsel.

And on consideration thereof, it is now here ordered and adjudged by this court, that the judgment of the said district court in this cause be, and the same is hereby, affirmed with costs.

UNITED STATES,
Eastern district of Pennsylvania, sct:

I certify the foregoing to be a true and faithful copy of the record and proceedings in the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, in a certain action therein lately depending, between John Taylor, jr., and William Blackburne & Co., plaintiffs in error, and the United States of America, defendants in error.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said circuit court, at Philadelphia, this thirtieth day of December, A. D. 1842, and in the sixty-seventh year of the independence of the said United States.

FRA. HOPKINSON, *Clerk Circuit Court.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the hono-
[L. S.] rable the judges of the circuit court of the United States for the eastern district of Pennsylvania, greeting:

Whereas, in a certain suit in the said circuit court between the United States of America and John Taylor, jr., and William Blackburne and Company, claimants of twenty-five cases of cloths, fifteen cases of cassimeres, one case of cloths and cassimeres, and twenty-four pieces of pilot cloths, which suit was removed to the Supreme Court of the United States by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit: "That the charge of the court therein referred to, as annexed to and forming part of the bill of exceptions, is not returned therewith to this court."

You, therefore, are hereby commanded that, searching the record and proceedings in said cause, you forthwith certify what omissions you shall find to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court, the second Monday of January, in the year of our Lord one thousand eight hundred and forty-three.

WM. THOS. CARROLL,
Clerk of the Supreme Court U. States.

JOHN TAYLOR, Jr., and al., plaintiffs in error,
vs.
THE UNITED STATES.

Certiorari.

Rec'd, 23 June, 1843.—The return to the within writ appears by the schedule annexed.

FRA. HOPKINSON, *Clk. C. C. U. S.*

On the 4th of May, the following charge was delivered to the jury:

It is within one day of eight weeks since you were empannelled and sworn to try this cause. I have no knowledge of any trial in a court of justice of this duration. Perhaps the time that has been consumed is not more than its importance and difficulties required. On the one side, it is alleged that the object of the prosecution is not only to punish the particular fraud complained of, but to expose and break up an extensive combination in a foreign country, whose artifices and operations are preying upon our revenue, crippling our domestic industry, and driving our honest traders out of the market. On the other side, it is certainly true that the character and property of a citizen are deeply involved in the result of the investigation. Our duty only now remains to be performed. We

have had from the counsel all the assistance that learning and labor could produce. We must endeavor to use it carefully and conscientiously. In doing this, you must keep in mind that you are not examining the truth or falsehood of a single fact or allegation. You are investigating a charge of fraud of a complicated character, and such an inquiry calls for your most vigilant attention and care that you be not deceived. It is of the essence of fraud to be secret in concerting its designs and wary in executing them, to mislead by false appearances, to put on an honest face and front, and to preserve all the regularity and forms of a lawful proceeding. But the danger of being deceived must not make you too suspicious, nor must you suffer your fears to change the true color of things. You have observed that, in the course of the trial, numerous questions of law, on the evidence, have been discussed and decided. One of them, particularly, was of vital importance to the case, and was argued most elaborately. You will understand that, for any errors I may have committed in these decisions, the disappointed party has a remedy; and, also, that for any errors I may fall into in my charge to you, he has the same redress. It will be my duty to give you my opinion and constructions on matters of law, clearly and explicitly, not only that you may not misapprehend them, but that the parties may have the full benefit of their right of exception and objection. As to the evidence and facts of the case, I shall no farther interfere with your rights over them than by reminding you of such as appear to me to demand your particular attention, with such remarks as may afford you some aid in your deliberations upon them.

Before we come to the consideration of the issues presented by the pleadings, we must dispose of some preliminary objections which are asserted, on the part of the claimants, to be destructive of the whole proceeding. It is said that the seizure of these goods was irregular, unlawful, and a violation of the rights of the claimant, and that this prosecution, being founded on that seizure, is vitiated by it. And how is this pretension maintained? It is contended that the affidavit, on which the warrant of seizure was issued, was illegal; that it does not contain charges and specifications to justify the warrant, and that the warrant is equally defective. I see no ground whatever for the objection. The whole proceeding is substantially in conformity with the directions of the act of Congress. As to a particular description of the goods, that was obviously impossible, and would be so in nine cases of ten of seizures for similar offences. So as to the place. These goods were in a room which was a part of No. 24, to which there was no access but by the door numbered, on the street, 24. It was truly a part of the store of Messrs. Blackburn, and not Mr. Worrell, who had no means of communication with it.

But all this I hold to be entirely immaterial to the issue now trying. These goods are now in the possession of the officers of the United States, and they are claimed as the property of the

United States by reason of a fraud which forfeited them. The irregularity of the seizure, even if there was an irregularity, cannot avail the claimants on this trial; it is no defence for them against the charge of fraud, or the claim of property in these goods by the United States. If the officers were guilty of a trespass, they must answer for it, if the claimants shall find it expedient to bring their action for it. If they might have forcibly resisted the execution of this warrant, and had done so, then that question would have been tried in another proceeding. But here we have nothing to do with it. Let me explain this doctrine, if it can need any explanation, by a familiar case. It is suspected that stolen goods are concealed in a particular place—a warrant is issued to search for and seize them—a great quantity is found concealed—the person in whose custody they are found is indicted for receiving them. Can it be allowed or believed that he might put his defence on the allegation that there was some informality in the warrant of seizure or manner of executing it, and that, therefore, the indictment and all the subsequent proceedings were illegal and void? And would it not be thought strange if the accused, in such a predicament, and to support such a defence, were to make a clamor about his liberty and the invasion of his rights by the harpies of the law, and the sanctity of his home? These goods are now held, not under the warrant by which they were taken, or by the seizure made by virtue of that warrant, but by process issued from this court by the authority of which they were attached by the marshal of the court, and are now in his custody.

Another much more important objection is presented to our further proceeding in this prosecution, and which, were it well sustained, would have terminated this trial almost at its commencement. It is the question already mentioned, and which was so fully argued on a question of evidence, and has been again urged upon the court. I shall give you my opinion now, as I did then, so that the claimants may have their exception to it, either on the ground of an improper admission of evidence, or of an error in my instructions to you. I shall speak of it now briefly, having given my reasons at large on the former occasion. It is contended that, as these goods were appraised at the custom-house, in New York, at the invoice prices—that as they were passed through that custom-house on that appraisement—paid the duties according to that appraisement, and were thereupon delivered to the importers—they are now exempted from all further inquiry into their cost or value, not only in relation to the amount of duties legally chargeable on them, but on a prosecution for fraud in making up those invoices, and on any or every other account—that the very fraud by which it is alleged, in this prosecution, the passing of the goods through the custom-house was obtained, that is, the false invoices, cannot now be inquired into. I can, by no means, assent to this doctrine, which, in my judgment, would be to offer a premium for successful fraud, and punishment only to the unskilful. I adhere,

on reflection, to the opinion I gave on the trial. I will add but a remark. It is said these officers are the appointed agents of the Government, and that the Government is bound by their acts. The answer is plain. The Government does not claim any right or privilege for itself that every citizen does not possess. Suppose one of you should appoint an agent to sell your house or goods, with even more clear and full powers than those given to the appraisers by the acts of Congress. Your agent makes a sale, but it is afterwards proved that he has been grossly defrauded by the purchaser, by false representations, by the suppression of the truth, by that which constitutes fraud in the law. Would you suppose you are bound by such a transaction—that the cheat is safe, and may retain your property only by saying that it was delivered to him by your agent?

It has been insisted on the part of the claimants, that our revenue laws, at least those we have been considering, are penal laws, highly penal, and therefore are to receive a strict construction in favour of those who may be prosecuted under them. It does not appear to me that this point is of much importance in the present case, but I have been asked for an opinion upon it. It must not be understood that every law which imposes a penalty, is therefore, legally speaking, a penal law, that is, a law which is to be construed with great strictness in favour of the defendant. Laws enacted for the prevention of fraud, for the suppression of a public wrong, or to effect a public good, are not in the strict sense penal acts, although they may inflict a penalty for violating them. It is in this light I view the revenue laws, and I would construe them so as most effectually to accomplish the intention of the legislature in passing them.

These secondary matters being disposed of, we come to the examination of the matters in issue between the United States and the claimants. They are distinctly set forth in the pleadings. The information or libel states the causes for which a forfeiture of these goods is claimed, and the claims and answers set out the defence on the part of the claimants. To these documents your attention will be directed, for it is in them you will find the allegations on which you are to pass by your verdict.

The information contains thirteen counts, as they are called, but in fact many of them are but a repetition of the same charge presented in a different form, so as to meet the evidence as it might come out on the trial. I will briefly recur to them.

1 and 2. The first and second counts of the information charges, that the goods were brought into some port of the United States, and were there unladened and delivered without a permit. The first states that the port is unknown—the second, that it was the port of New York.

These counts are not supported by the evidence. It appears that the goods were landed and delivered from *the vessel* in which they were imported, under a custom order, and by the custom-house offi-

cers; and were afterwards delivered, not from the vessel, but from the stores, to the claimant on what are called land permits.

3d count charges that the goods were found concealed, the duties thereon not having been paid. This count is founded on the 68 § of the law of 1799, which gives authority to every collector, naval officer, &c., if they have cause to suspect a concealment of goods, &c., subject to duty, in any particular dwelling-house, store, &c., having obtained a warrant from a justice of the peace to enter such house, store, &c., and there to search for such goods, "and if any shall be found to seize and secure the same for trial, and all such goods, wares, &c., *on which the duties shall not have been paid*, or secured to be paid, shall be forfeited."

Two questions are to be considered under this law.

1. Were the goods concealed in the place where they were found? This is a matter of fact which you will decide on a careful review of the evidence. It appears that the claimant, Mr. Blackburn, rented a store in Church alley, No. 24, in this city.

That the adjoining store, No. 26, was rented by Mr. Worrell, and that the lower, or ground story, was occupied by him. The second story or floor of this store, which extended over the whole building, was in the occupancy of Mr. Blackburn, and the access to it was by a large opening or doorway from Mr. Blackburn's 2d story into it. This door was usually kept open, and was so in July and August last, and up to the 20th of August, on the day when the seizure was made.

On the morning of that day the porter of Mr. Blackburn saw in a newspaper, or was informed by somebody, that a seizure had been made of Mr. Broadbent's goods. Whether Messrs. Blackburn had the same information or not is not in direct evidence—but you will judge from all the circumstances whether they knew it or not.

On the same morning, the hour is not precisely fixed, at about 8 or 9 o'clock, this door or passage is completely blocked up and concealed by boxes, &c., so that persons going into Mr. Blackburn's 2d story, saw nothing by which they could discover or suppose there was any communication between the two rooms.

The officers on their first visit did not discover it, they went away; but on getting further information, they returned, and by introducing a stick between the boxes, they found where the passage was, removed the obstructions which concealed it, and went into the adjoining room. It was entirely dark, although Mr. Blackburn's porter says he had opened one of the windows that morning. In this room the goods in question were found, some in their cases, some lying on them. This is the evidence of a designed concealment, from the situation in which the goods were found. Are these circumstances of suspicion explained or confirmed by the conduct of Mr. Blackburn? When the officers came to his store he was there. They told him their business, he said they might search. He said he had no goods in his possession but what were imported through the port of Philadelphia. The officers examined the cloths and cassimers in the lower story, and then went up-stairs of store

No. 24. After looking at some cloths and cassimers there, one of them asked Mr. Blackburn if they were all the cloths in his possession. He answered YES, you have seen all. He was asked if he had no other store in the neighborhood. He answered NO, you have seen all that we have. The officer did not, on this visit, discover the passage into the next store; they returned in the afternoon. One of them said to Mr. C. Blackburn that they wished to see the 2d story over Mr. Worrell's store. He replied, you have seen all the rooms that we have. The officers went up-stairs and searched for the entrance into the next room. He denied that there was any access to that room. They proceeded in their search to discover one, and at last he said the entrance is behind those boxes. The officers were thrusting a stick between the boxes. In the next room the goods were found, and Mr. Blackburn said he was the owner of them. In this short conversation, we have five absolute, undoubted false assertions. No equivocation, no evasion of the questions, but clear and explicit denials of the truth. Counsel says he had a right to refuse to answer, but did he?

2. Such is the question of fact on this part of the case. Such the evidence from which you are to decide whether these goods were concealed or not—in the ordinary acceptation or meaning of the word—and it is in relation to that question I am now adverting to this evidence. What bearing it may have on another part of the case, will be seen. There is another question on this part of the case, which is partly a question of fact and partly of law. It is not enough that the goods were concealed. They might be so for an object and purpose with which neither the United States nor their revenue law have any thing to do—in which they have no concern. To make this concealment the ground of a forfeiture, the goods, 1. Must be subject to duty—of this there is no question in this case. 2. The duties must not have been paid or secured to be paid. The concealment, therefore, spoken of in the act of Congress, must have had relation to these objects. In 12 Wheat., 493, Judge Washington, delivering the opinion of the Supreme Court, says: "The term *concealed*, used in this section, is one of plain interpretation, and obviously applies to articles intended to be secreted and withdrawn from public view, on account of their being so subject to duties, or from some fraudulent motives." It has been contended for the claimants, that the concealment relates only to smuggled goods. I do not think so; it relates to any goods subject to duties, and on which the duties have not been paid.

This natural and satisfactory interpretation of the law, brings us to another question, or the meaning of the act, which is a question of law. Were the duties on these goods paid, in the meaning of the words in this section? They had been passed at the custom-house of New York, and the duties there assessed upon them had been paid. Does this satisfy the provision of this 68 § of the act of 1799? In my view of this question, it brings us to the main subject of inquiry in the case, that is: Were these goods invoiced

at their fair and true cost and value? for the duties were paid according to the value and prices in the invoice. If those prices were the real cost of the goods, then the whole duties due upon them have been paid, and the concealment was not such a one as is described in the act. But it is contended, that as to the amount of duties payable on these goods, the assessment made at the custom-house is conclusive, and that therefore the concealment of these goods can have no connexion with the duties. In my opinion this proposition is too broad, and cannot be maintained by the true construction of the act. Without deciding what our case does not call upon me to decide, that is, whether the appraisement made at the custom-house is conclusive upon the question of duties, so as to bar any action for an additional amount if that appraisement should afterwards be found to be too low, and where the error was one of the appraisers, without the use of any contrivance, fraud, or deception by which they were misled on the part of the owner of the goods, I am of opinion that an appraisement procured by such fraud and contrivances will be no protection to them by whom they were perpetrated. It is an universal maxim of law, of equity, of morals, that no man shall be permitted to gain an advantage by his own fraud. When, therefore, the 68 § of the act of 1799 declares, that "all such goods, wares, and merchandise, on which the duties shall not have been paid, or secured to be paid, shall be forfeited," it means the duties which were justly and legally chargeable upon the goods, and not a part of them, and that if the owner of the goods has obtained possession of them, or passed them through the customs by paying a less amount of duties than were justly chargeable upon them, and has obtained this advantage by any fraud or contrivance upon the officers of the Government, it will not avail him, and that if his goods are found to be concealed within the meaning of the act, he cannot avoid the forfeiture by alleging and showing that he had paid the duties required of him at the custom-house.

You will further observe that the Supreme Court, in the case I have cited, have decided that the concealment spoken of in the act, applies to articles intended to be secreted or withdrawn from public view, on account of their being so subject to duties, "or from some fraudulent motive." I understand these general words, "or from some fraudulent motive," to be restricted to a fraudulent motive connected with the duties or revenue laws of the United States. If, then, you shall believe that these goods were concealed, and that they were concealed on account of their being subject to duties, or from some fraudulent motive, they are forfeited by the provision of the 68 § of the act of 1799.

The 4 and 10 counts of the information bring up the question whether the 66 § of the act of 1799 has been repealed.

This repeal has been contended for on the part of the claimants by virtue of several subsequent acts of Congress. The part of the 66 § important to our present inquiry, enacts, "That if any goods,

wares, or merchandise, of which entry shall have been made in the office of the collector, *shall not be invoiced* according to the actual cost thereof at the place of exportation, with design to evade the duties thereupon, or any part thereof, all such goods, wares, and merchandise, or the value thereof, to be recovered of the person making the entry, shall be forfeited."

Before we look to the subsequent acts by which it is contended that the above provision is annulled, it is proper to remark, that no express or declared repeal is to be found in any of them; it is inferred or implied from certain provisions or enactments in the subsequent laws, from which it is argued that the section in question has been repealed. I had occasion to remark, in an opinion given in the course of this trial, "that the repeal of a law by implication and construction of a subsequent law, should be so clear as to have no reasonable doubt that such was the intention of the legislature; it should be as certain as an express repeal. It should not be deduced by an ingenious course of argument, but should appear at once." The general presumption is, that if a repeal was intended, it would have been expressly declared, and such is the usual practice of legislation. In the laws to which we have occasionally referred in the argument of this case, it has been seen how frequently repeals of sections and parts of sections have been declared.

It is not necessary, in the duty I am now discharging, to detain you with a minute examination of all the acts of Congress from which the repeal of the 66 § of the act of 1799 has been inferred. As to the law of 1818, of 1823, and 1828, they appear clearly to me to provide for cases entirely different from those described in the 66 §, which relates to goods invoiced below their actual *cost*, with design to *evade the duties* thereupon. None of the acts just mentioned provided for any such case. With this understanding of these acts, it is unnecessary for me to inquire whether the expiration of the act of 1818, by its own limitation, would revive the 66 § of the act of 1799, if it were admitted to have been supplied by the law of 1818. On this subject I would suggest that, when a statute contains an absolute affirmative repeal of an antecedent statute, or a part of it, then the expiration of the subsequent statute, by its own limitation, would not revive the repealed act; but where there is no such express repeal, but the first statute is taken to be repealed by the implication that it is supplied by the subsequent law, then it would seem that we might well consider that the second law was rather a suspension than a repeal of the first; and if the legislature after the experiment allowed the second act to expire, it was their intention to go back to the provisions of the first. Otherwise there would be no legislation on the subject.

The difficulty of this question arises on the fourth section of the act of 1830. This section, after directing the collector to have a certain number of packages to be opened and examined, and in what cases he shall order all the goods contained in the entry to be inspected, proceeds, "and if such goods be subject to an ad valorem

duty, the same shall be appraised, and if any package shall be found to contain any article not described in the invoice, or if such package or *invoice be made up* with intent, by a false valuation or extension, or otherwise, to evade or defraud the revenue, the same shall be forfeited." This seems, on a superficial view, to provide for a case very similar to that described in the 66 § of the act of 1799. That enacts, that if any goods, &c., *shall not be invoiced according to the actual cost thereof*, with design to evade the duties thereupon, this, that *if the invoice be made up* with intent, by a *false valuation* or extension, or otherwise, to evade or defraud the revenue, a forfeiture shall follow.

Before we examine and compare more closely these two enactments, we should remark, that immediately following that in the act of 1830, there is an express repeal of the 15 § of the act of 1823, and also of certain parts of other acts of Congress, but not an intimation of any intention to repeal or affect the 66 § of the law of 1799. We must examine this question under the restriction, that repeals of laws by implication, by construction, by conjecture, however plausible, are not to be favoured. The law has given a strict rule by which we are to measure and try the case. I shall take it, for it appears to me to be truly stated from the opinion of Judge Thompson, in the case of the United States *vs.* 1 Case of Hair-pencils, 1 Paine, 405, 406. "It is admitted that a repeal, by implication, of a former by a latter statute, is not to be favoured. But such effect and operation is indispensable in some cases, as when the subsequent statute is inconsistent with the former, and the two cannot be reconciled. So, where the latter is on the same matter with the former, and introduces some new *qualifications* or *modifications*, the former must necessarily be repealed, the two cannot stand together, and in most cases the question resolves itself into the inquiry, what was the intention of the legislature? Did it mean to repeal or take away the former law, or was the new statute intended as merely cumulative? Affirmatives in statutes that introduce new laws, imply a negative of all that is not in the provision; so that a law directing a thing to be done in a certain manner implies that it shall not be done in any other manner."

The judge has given us the true rule by which we must be governed in deciding whether a clear affirmative statute has been repealed by implication, by supposing a repeal where none has been declared by the legislature. Such a repeal has been insisted upon in this case by virtue of the enactments in the acts of 1818 and 1823. In an opinion delivered on a question of evidence in the course of this trial, I had occasion to look to this argument, for the presumed repeal was elaborately argued on that question. I adhere to the opinion then delivered, that there is no repeal to be drawn from those statutes, of the provision in the 66 § of the act of 1799, declaring that if any goods, wares, &c., "shall not be invoiced according to the actual cost thereof at the place of exportation,

with design to evade the duties thereupon, or any part thereof, all such goods, &c., or the value thereof, to be recovered of the person making entry, shall be forfeited." Here are two strong defences provided by Congress to protect the revenue from the depredations of fraud and perjury. I am now asked to remove them by an implication, by an argumentative construction, by assuming that Congress have intended to do what they have not declared, that they have surrendered or abandoned them. That for the forfeiture they have substituted an increase of duty, and for the right of recovery against the offender, in case the goods are put out of their power, nothing. Surely there was nothing in the experience of the Government to induce them to weaken their defences against fraud; on the contrary, their efforts have been to strengthen themselves to meet and defeat, by their laws, the stratagems and devices from time to time invented by those whose interest it was to evade them. The statutes do not relate to the same matter; they describe and provide for dissimilar cases; the first, for a false invoice with a design to evade the duties, that is, with a fraudulent intention; the other, for an undervaluation of the goods without any such design. It is obviously just and reasonable that the penalty in the former case should be an entire forfeiture of the goods, but that the error in the latter should be repaired by imposing an additional duty upon them. This act, then, of 1818, and all the provisions in it for appraisement, have for their object the ascertainment of duties, while the law of 1799 inflicts forfeiture for a designed fraud, consummated by a wilful perjury. Can I say that the act of 1799 was supplied by that of 1818, or that it is inconsistent with it; that they cannot stand together, and one or the other must fall? Is the first swallowed up, in the language of the counsel, by the latter? I cannot believe in any such view. I believe that the two acts were intended to provide for different cases, that they are entirely consistent, and that it would be a bold stretch of my judicial power to imply, to presume that Congress intended to repeal the one by the other. In truth, the repeal would be by the court, and not by the legislature.

The doctrine contended for by the claimants, and founded on the repeal of the act of 1799, is, that there is no longer any forfeiture for entering goods by a false and fraudulent invoice, designed to evade the revenue, and that by the subsequent laws the fraud must be discovered in the custom-house on the examination and appraisement of the goods, and the seizure made before the goods leave the custom-house. The practical result of this doctrine is, that goods may be invoiced and entered at a false valuation, with the undoubted design to defraud the revenue, and nevertheless, if the fraud is so well contrived, so artfully concealed, or so well managed in the custom-house, that the owner can get his goods over the threshold, they are safe from pursuit and forfeiture, and the fraudulent owner cannot be called upon for their value. I do not see where this doctrine stops, nor why it does not extend to case when the goods were

fraudulently withdrawn from the stores of the custom-house, nor do I see how the additional duties directed under the act of 1818 *is* to be assessed upon them, or recovered. This doctrine is too strong for me to take upon myself. When Congress shall say that such is their intention, I will obey their command, but I will not take upon myself to presume to imply such an intention, on conjectural arguments and ingenious constructions.

The system adopted by Congress, so far as concerns our inquiries, appears to me to be this. 1. By the act of 1799: If an invoice contains goods that are undervalued, with design to evade the duties, the goods so undervalued are forfeited. 2. When this undervaluation shall exceed a certain amount, the consequence to the importer was, that he should pay an additional amount of duties according to the circumstances of the case, although there may have been no design to defraud the revenue. This was by the act of 1818. 3. Where a package or invoice has been *made up* with intention to defraud, the package or invoice so made up is forfeited. This is under the act of 1830.

I cannot say that I have any doubt or difficulty in deciding that there is nothing in any act of Congress antecedent to that of 1830, from or by which I could imply or suspect that Congress intended to repeal the part of the 66 § of the law of 1799 to which I have referred; much less is there that clear, distinct, and irresistible evidence of such intention, which would justify a court sitting to administer and not to make the law, to pronounce that such was the intention.

My difficulty, and I have had some, has been with the act of 1830, and that demands a particular examination. Are the provisions of that act repugnant to or inconsistent with the 66 § of the act of 1799, or is that section fully supplied or swallowed by the enactments of the law of 1830? The 4 § of this act is that which is most relied on, and certainly has the strongest bearing on the question.

By this 4 § the collectors are directed to have a certain number of packages out of every invoice opened and examined, to be designated by the collector. If on this examination it shall be found: 1. That the packages opened do not correspond with the invoice, by which I understand do not correspond in the description of the goods, their quality, quantity, &c. 2. Or to be falsely charged in such invoice, clearly referring to their price, value, cost, then all the goods in the entry are to be inspected. After this inspection, if it shall appear to the collector that the goods are falsely charged in the invoice, that is, are charged at false prices, at prices below their actual value or cost, as the case may be. If the goods are subject to an ad valorem duty, they are to be appraised in order to ascertain their true value; and 1, if any package shall be found to contain an article not described in the invoice, or 2, if such package, or 3, if such invoice be *made up* with intent, by a false valua-

tion, extension, or otherwise, to evade or defraud the revenue, the *same* shall be forfeited. What *same* shall be forfeited? It is clear to me that it refers to each and all of the cases before stated, that is, the same package which shall be found to contain an article not described in the invoice, the same package which shall be made up with intent to defraud, and the same invoice which shall be made up with such intent. If the package be so made up by containing goods of a different quality, quantity, &c., with those described in the invoice, they are forfeited; or if the invoice be made up, by a false valuation, to defraud, in either case, the forfeiture of the package in the one case, and of the invoice in the other, is inflicted. A verbal criticism has been made on this clause, that is, that an *invoice* cannot be forfeited. I have no difficulty in understanding this to mean the goods contained in the invoice, and because, by the very force of the criticism, the language can have no meaning at all if it has not this. The thing containing is often spoken of for the thing contained in it. If as has been contended for the claimants, the words "if the package be found *not to correspond with the invoice*," embrace price or value as well as quantity, quality, &c., then the subsequent words, "or to be falsely charged in the invoice," are mere surplusage, have no meaning or effect whatever, and must be overlooked or expunged, contrary to a sound rule in the construction of statutes, indeed of every written instrument. What change has the act of 1832 made in the provisions of the section of the act of 1830? It has been seen that, by this section, if an article was found in a package not described in the invoice, the whole package was forfeited; by the act of 1832 this penalty is moderated to a forfeiture of the article not entered, and as the entry must conform to the invoice, it is the same as if it were said not contained in the invoice. So the forfeiture is continued where the package has been made up to defraud the revenue, so far as respects the package; then as to the invoice, so much of the said 4 § of the act of 1830 as prescribes a forfeiture of goods found not to correspond with the invoice, is repealed, which I have understood to mean not to correspond—quality, quantity—but there is no repeal of that part of the section which relates to goods "falsely charged in the invoice, or to an invoice made up with intent to defraud." With this view of the act of 1830, we must inquire whether its provisions are inconsistent with, or repugnant to, the enactment in the 66 § of the act of 1799, now a question. Are they so irreconcileable that they cannot stand together, that they cannot be both in force? Is this so clear and demonstrable as to force upon us the conclusion that Congress, in enacting the last, must necessarily have intended to abrogate the first?

The act of 1799 speaks of the actual *cost* of the goods, that of 1830 of a *valuation* to be made by an appraisement. Do they mean the same thing? the one refers to a standard of value known to the party, and infallible; the second to a standard of opinion, and

which may be mistaken. The case cited from 11 Wheat., 419, 427, decides strictly no more than that the words *true value*, in the 11§ of the act of 1818, import the same thing as actual cost, and other cases have been cited to the same purpose in the construction of the acts there under consideration; but it is not to be inferred from these decisions, that in all cases, or in every act of Congress, they are always used in the same sense. The inquiry always is with respect to the basis on which, in the particular case, the ad valorem rate of duties is to be estimated; whether upon the *actual cost* or the *current market value thereof;* the act then in question is examined, and it is concluded that the word *value* cannot be understood in any other sense than the words *actual cost* on the act then under consideration, pp. 420, 421. Their natural meaning would not seem to be the same; the one would ordinarily be applied to the goods purchased, the other to goods sent by the manufacturers, or procured on some other way than by purchase. This distinction is recognised in the 5 § of the act of 1823. It directs, that ad valorem duties shall be estimated by adding "to the *actual cost* of the same, if the same shall have been actually purchased, or to the *actual value*, if the same shall have been procured otherwise than by purchase."

This inquiry goes as well to the question, whether the act of 1830 embraces the same case with that of 1799, and therefore supplies it, as to the question whether they are inconsistent. If they do not relate to the same subject matter, then the act of 1830 is neither a substitute for or inconsistent with that of 1799. I leave this part of the argument with these observations, and go on to the inquiry whether in any other respects these acts are inconsistent, so that both cannot be executed. How are they inconsistent? Why may they not stand together? They appear to provide for different offences, and to inflict different penalties, and that both may be executed, both may stand and be applied to the cases as they fall under them. The act of 1799 declares that, if goods shall not be invoiced according to their actual cost, with design to evade the duties, all *such goods* shall be forfeited. The offence is having goods in an invoice put down not according to their actual cost; the penalty is a forfeiture of the goods; and there is nothing in this act from which it can be inferred, as has been done in relation to the subsequent acts, that the fraud of the invoice must be discovered before the goods leave the custom-house, or that they must be there seized. If they have been falsely and fraudulently invoiced, the forfeiture attaches to them when the fraud is committed, and they may be taken and forfeited for it any where and at any time. But the offence designated in the law of 1830 is entirely a different one, and the penalty is different, and neither of them inconsistent with the act of 1799. I shall speak only of the invoice. By the act of 1830, there is no provision for the forfeiture of individual goods which are falsely charged in an invoice, but the pro-

vision is, if the invoice be *made up* with intent to defraud, then the *invoice* is forfeited. The offence is the making up, the preparing and fabricating an invoice with design to defraud, and this deliberate concoction of such an attempt upon our revenue and its laws, inflicts and forfeits the whole invoice, although it may contain goods properly charged. Is there not reason for this? When goods are found, perhaps but one or two articles in a large invoice, it would be harsh to forfeit the whole on that account, although these individual articles may have been introduced into the invoice with a fraudulent design, all the rest having been honestly invoiced without any intention to defraud. It was therefore thought sufficient to guard against such a practice to forfeit the offending articles. But when the whole invoice was fabricated, prepared, made up with a design, traced back to its formation, it was manifestly right and just to visit the deliberate contriver of the scheme with a forfeiture of all the goods contained in the invoice, without any discrimination in favour of such as may have been invoiced at a proper price, perhaps to assist in deceiving the officers and defrauding the law.

In this particular these acts appear to me to be consistent, to provide for different cases, to direct different proceedings, and to impose different penalties. The latter is therefore no substitute for the former. On a different construction there would be no penalty or no forfeiture of goods for invoicing them at false prices, unless you could go on and show that the whole invoice was made up with that design. No penalty, but such an increase of duty as is imposed upon the most innocent error in charging the goods.

But there is another important particular in which the 66 § of the act of 1799 is neither supplied by or inconsistent with any of the subsequent acts. I have already adverted to it. I mean that provision which gives to the United States a right of recovery of the value of goods which have not been invoiced according to their actual cost with a fraudulent design. This proceeding was intended to be applied to a case when the goods could not be reached by a seizure and forfeiture, but have been got through the custom-house—had been removed from its stores, and so disposed of as to be out of the power of the United States. This is obviously a most important and effective instrument in the hands of the Government. It teaches the offender that however he may succeed in deceiving or in corrupting the officers of the custom-house—however he may succeed in putting his goods where the law cannot reach them, he will not be safe in the perpetration of his crime, but will be personally answerable for the goods which were forfeited to the United States and became their property by the fraud. Has Congress in any manner, express or implied, abandoned this most valuable guard over their custom-houses and their revenue? If they have not, have I a right to do it for them by a judicial construction of acts that have no reference to it in any way? If this enactment is to be taken away, it must be done by the authority

that made it. It is not for a court, bound to execute the law, to construe away by remote implications and argumentative constructions, such a salutary provision as this. I will add another observation upon this part of the case. The counsel for the claimants have contended, it is not necessary for me now to say with what success, that by the provisions of the act of 1830 and the subsequent acts, the whole proceeding, as respects the goods, must take place in the custom-house, the examination and appraisement must be there, the fraud must be there discovered, and the seizure there made. What is the effect of this argument upon the question of the repeal of the 66 § of the act of 1799? If the argument be sound, and the claimants must stand by it, or they will escape the act of 1799 only to fall under that of 1830, if the argument be sound, and the 66 § of the act of 1799 is repealed, then it follows that the fraudulent owner of goods passed through the custom-house by a false invoice and a false oath may, an hour afterwards, exhibit them and hold them in open day safe from all danger, intangible by the law and the officers of the law, and furthermore, be not personally responsible for the value of the goods he has thus taken from the United States, and which in truth and fact were the property of the United States. Could Congress have intended this? This would be to lay the revenue bare to the hand of the spoiler, and to say to him, do your business adroitly, avoid immediate detection, and you may do it with impunity! Every citizen may follow and take his goods fraudulently taken out of his possession: but this just and necessary right is denied only to the United States. Can this be so? The right and property, whatever they were, which the United States had in these goods, could not be divested by a fraud.

I have now disposed of the most important questions of law which have been raised and discussed in the course of this trial. My decisions may be erroneous, and if they be so there is a means for correcting them. I have given to them a close and anxious attention, both on the argument here, and in my researches in my library. I have not therefore fallen into error from inattention or an indisposition to labour. I have given the result of my researches and reflections, and it is my highest satisfaction to know that another tribunal may be resorted to [to] review my opinions.

We now approach the evidence and facts of the case. But here a preliminary question of law meets us, which must be considered before we enter upon the evidence and facts. I allude to the question so strongly contested at the bar. On which party does the law throw the burden of proof: or the onus probandi? Are the United States bound to prove the charge of fraud affirmatively, to your full conviction, or have they done enough to make it incumbent on the claimants to prove their innocence? The answer to this question is not submitted to your discretion or to mine, but is given by an act of Congress which has been forty years in force, and the justice and policy of which has not been denied. By the

71 § of the act of 1799, it is declared that, "In actions, suits or informations, to be brought where any seizure shall be made pursuant to this act, if the property be claimed by any person, in every such case the *onus probandi* shall lie upon such claimant;" at the conclusion of the section, separated from this clause by other matter, it is added, "but the onus probandi shall lie on the claimant only where probable cause is shown for *such prosecution*, to be judged of by the court before whom the prosecution is had." When must this probable cause exist? When must it appear and be known? It is contended on behalf of the claimants that it must be antecedent to the seizure, must have been known to those by whom the seizure was made, and was the ground and warrant for their proceedings. I cannot by no means assent to this construction of the law. It has no reference whatever to the seizure, but to the *trial;* there must be probable cause for the *prosecution*, not for the *seizure;* and the court is to judge of it, by what appears to the court—by what comes to the knowledge of the court on the trial of the prosecution. If, then, the evidence adduced on the part of the prosecution shall in the judgment of the court show a probable cause for the prosecution, the law says, the burden of proof shall be thrown upon the claimant, that is, he must discharge himself from the prosecution, he must prove his innocence, that he has not committed the offences charged upon him, to the satisfaction of the jury, or he must stand condemned. At first blush this would seem to be unreasonable and unjust. If it were so we are bound to obey and execute the law; we have no power as a court, as jurors, or as citizens to disregard it. We shall see presently, I think, that it is neither unjust or unreasonable.

On the close of the evidence on behalf of the prosecution, how did the case stand before the court? 1. I refer generally to the circumstances attending the seizure; to the attempts to conceal the goods that the officers of the law were in search of; to the repeated, deliberate and confessed untruths declared to the officers by the claimants, to divert their pursuit and prevent the discovery of the goods, which were hidden with great skill. It has been said again and again by the counsel for the claimants, that they were not bound to answer the questions of the officers; that they might lawfully refuse to answer them. Let this be granted; but can it be denied that if they did answer they were bound to answer truly? They showed no reluctance to answer: they did so, promptly and freely, but falsely. Does this raise no presumption against their innocence? Is it not a strong ingredient in the probable cause required by the Act of Congress? As to the panic, caused by the suddenness of the attack, you will judge of that. I see no evidence of it. They had taken the alarm before the officers came there; they had time to deliberate and determine the course they would take, and they did determine to get clear of the difficulty and suspicion they laboured under, not by the open, candid proceeding of

men conscious of innocence and fearing no investigation, but, to protect themselves, to escape from it by a concealment of the property sought after, and by a tissue of falsehoods to prevent a discovery. This began in the morning and was continued in the afternoon. Where was the sudden surprise by which this conduct is now excused?

2. A second ground of probable cause shown by the evidence of the prosecution, is found in the testimony of the appraisers, public and private. We are not on this question to consider the effect of the claimants' evidence to diminish the force of that testimony. On the testimony of these appraisers, a very important undervaluation of the goods appears, and may be considered to you a probable cause at least for the prosecution. But there is a sort of negative testimony on this question of the *onus probandi*, which must have a powerful influence on the judgment of every man. It is, that the claimants have made no attempt—no pretence to meet the direct question in issue—that is, what was the actual cost of these goods, although it is undeniably in their power. And it is now that you will perceive that in a case of this sort, there is nothing unjust or unreasonable in throwing the burden of proof upon them, in calling on them to prove their innocence, after the United States have shown probable cause for the prosecution. We have on this point the opinion of as great a judge and as just a man as ever sat upon the bench to administer the laws of his country. In Brockenborough Reports of the Decisions of Chief Justice Marshall, 375, an opinion is delivered on this 71 § of the act of 1799. The Chief Justice says, "In this case, the United States are not required to establish guilt, but the claimants must prove their innocence. It is not the duty of the judge to justify the legislature, but surely if, in any case, such a legislative provision be proper, it is in this. The fact is generally premeditated, and is perpetrated under all the precautions, and in all the secrecy, which ingenuity can suggest, and the means of proving innocence, at least to a reasonable extent, which is all that can be required, are in *possession of the accused.* In such a case he may, without a violation of principle, be required to prove his innocence. In such a case, the absence of testimony, *clearly in the power of the claimant*, if not supplied by other equivalent testimony, must be fatal." The same doctrine is maintained by Judges Washington and Story, and by the Supreme Court of the United States. Indeed it has never been questioned, and that it is just and reasonable, is manifest to common sense. Peter C. C. Reports, 10. 2 Gall., 498. 8 Wheat., 407.

Apply these principles, so obviously just and reasonable, to this case. The question is, what did these goods cost in England? The claimants are the importers and purchasers. They know to a cent what they cost, they know of whom they purchased them, and they know precisely where to go for the proof, if they have it not in their pockets. But they have made no such attempt, nor have they given any reason for the omission. What says the Chief Justice to such a case, "that the absence of testimony, clearly in the

power of the claimants, if not supplied by other *equivalent* testimony, must be fatal."

The only attempt at a reason for the absence of this conclusive evidence, clearly in the power of the claimant, was made by one of the counsel. It was this, that the seizure was made for non-payment of duties, and gave him no notice that the cost of the goods would come in question. It was forgotten that the information was filed in September, which sets out precisely the grounds on which the forfeiture would be insisted on, and among the rest, that the goods were not invoiced at their actual cost.

On this question of the burden of proof, I am clearly of opinion that the United States have shown probable cause for the prosecution, and that the *onus probandi* is thereby thrown upon the claimants.

The important questions you have to decide in this case are, whether the goods in question, or any, and which of them, were invoiced below their actual cost; and whether the invoices, or any, and which of them, or the packages, or any, and which of them, were made up with the design to evade the duties legally charged upon them, to defraud the revenue of the United States. In pursuing this inquiry, you will always bear in mind the principle just decided, to wit, that the burden of proof lies on the claimants; that it is incumbent on them to prove to your satisfaction that the goods are invoiced at their actual cost. If they have not done so, their defence must fail. The first step in this inquiry is to ascertain what was the actual cost of these goods; and how has this been done on the part of the United States? By certain appraisements, made in the first place by official appraisers of the custom-house of this city, and further, by certain private appraisers selected for that purpose. I will here make a remark upon an argument strongly and repeatedly urged on behalf of the claimants. It is this, that there cannot be but one *official appraisement* of the goods, and that that must be made in the custom-house at which the goods are entered. I think it is not necessary to affirm or deny this doctrine. If the opinions of Messrs. Stewart and Simpson have not the authority of an official appraisement or act, they have nevertheless the weight of the judgment of men accustomed to value goods of this description, and who from their appointments, as well as their experience, may be presumed to have competent knowledge and skill in ascertaining their value. In this light you may consider their evidence, and give credit to it accordingly. The evidence of the cost or value of these goods, offered on the part of the United States, is found in these appraisements. But a preliminary objection is made to this evidence, which must be attended to before it is examined. It is said that you are to pronounce upon the *fact* of an undervaluation, and that you have no evidence of the *fact*, that is, no proof that the goods are invoiced below their actual cost; and why? Because you have no proof of what the actual cost was—

that you have the *opinions* and *valuations* of certain persons here in this city, but these do not and cannot prove the fact. You have been asked, with great energy and no small plausibility, will you pronounce a sentence of fraud upon the claimants? Will you condemn and take away these goods on mere opinions and valuations, where you ought to have proof of the *fact* that they were undervalued? In reply to these pointed inquiries may you not ask, why is it that you have not the direct evidence of the fact of actual cost? Why are you obliged to resort to inferior evidence to come at that fact? It is because the claimants who urge this objection upon you, who have in their knowledge, and at their command, the positive proof of the cost of the goods, have not produced it to you. It is indeed remarkable that, having such proof in their power, they have resorted to, relied upon precisely the same evidence they condemn when used by the United States, that is, opinions and valuations obtained here. Is this course of proceeding characterized too strongly, if you should consider the claimants as saying to you: We know what these goods cost; we have the proof in our hands, but we will not produce it; we will compel you to resort to valuations and opinions, and then say they are not *facts;* we know that your appraisers will not exactly agree in their valuations, it is not possible they should, and then we will use them to destroy each other, and we will claim to be acquitted of all wrong, because half a dozen men cannot agree upon the amount of the wrong; your witnesses must differ, if they are honest, and in this confusion we will escape. "The absence of testimony," says the late Chief Justice, "clearly in the power of the claimants, if not supplied by other equivalent testimony, must be fatal." I will say to you that, in such circumstances, you are justified in making the strongest presumptions against the party thus withholding the truth from you. This principle, so obviously just and reasonable, is fully recognised in a case reported 1 Str., 505, well known in our courts. A chimney-sweeper boy found a jewel, and carried it to the shop of the defendant, who was a goldsmith, to know what it was, and delivered it to an apprentice in the shop. He, under pretence of weighing it, took out the stones, and said it came to three half pence. The master offered the boy that money, who refused to take it, and insisted upon having the jewel again. They gave him the socket without the stones. The boy brought an action of trover to recover their value. But the value was unknown, and the defendant would not produce the jewel. Whereupon, witnesses of the trade were examined to prove what a jewel of the finest water, to fit the socket, would be worth. The Chief Justice directed the jury, that unless the defendant did produce the jewel, and show it not to be of the finest water, they should presume the strongest against him, and make the value of the *best jewels* the measure of their damages, which they did accordingly. The application of this case to that before us is plain; as the claimants will not show the actual cost

of these goods, you may presume the strongest against them, and estimate them at the highest appraisement that has been made.

You are now to make up your verdict upon such testimony as you have received upon these questions: Were these goods invoiced not at their actual cost? And was this done with a design to evade the duties chargeable upon them? Were the invoices or packages made up with intent, by a false valuation, to defraud the revenue of the United States?

For the ascertainment of the cost or value of the goods you have various appraisements, made at different times and places, and by different persons. The first at New York, by Mr. Lounsbury, an assistant appraiser, duly appointed and sworn, and by Mr. Tripler, not an appointed appraiser, but the clerk of the appraisers. This appraisement appears to have been made with the greatest possible speed, and the least possible examination. The time occupied was very short; and of the 721 pieces, but about 32 were examined at all.

Mr. Loundsbury told you that he has examined 100 packages a day, which, on his own average of 4 pieces from each package, would be 400 pieces examined in a day. You have seen how many hours it took here to examine 30 or 40 pieces, and you must judge what sort of an examination Mr. Lounsbury gave to his 400, and what reliance you ought to place upon his estimates.

You will say whether you will take such a valuation as a safe standard for the whole. I do not intend to speak to you of the examinations and valuations made by Mr. Robinson and other gentlemen of New York, nor of the objection made by the United States to the confidence that should be placed in their opinions and testimony. You have heard their evidence; you have heard the objections repeated again and again by the counsel, and it is a question of credit of which you are to judge.

Of the appraisement made here you are more able to make a just estimate. The witnesses are your fellow-citizens, well known to you, and individually entitled to your respect. Their means of information will, then, be the particular subject for your consideration on the one side and the other. You have for the United States, Mr. Stewart, Simpson, Siter, Lewis, Churchman, Kennard, Tingly; and for the claimants, Burk, Bernard, Williamson, Newlin, Richardson, Maybury, and some from New York. Your attention should be more directed to the knowledge, the experience, the skill, in judging of the value of cloths, than to the number. One competent witness would outweigh many incompetent ones; but where competency is, equal numbers will preponderate. It is not like evidence of a *fact*, where the honesty of the witness gives him credit; it is evidence of opinion; of judgment, where the honesty of the witness will not sustain him, unless he has knowledge and skill to give confidence to his opinion.

As to the variance between the valuations made here in court,

and those previously made by the same persons at the custom-house, you will remember that Mr. Siter, Mr. Lewis (I think), and Mr. Churchman declared that they could not pretend to form as satisfactory an opinion here as that made at the custom-house; that they would themselves have but little confidence in it, and, in case of a difference, should adhere to the appraisement at the custom-house. With these explanations and qualifications, you will enter upon the examinations of all the appraisements, and come to the conclusion you shall conscientiously believe to be just and true. It is, I think, a very clear proposition, that a valuation made by four or five judicious persons, all meaning to do right, who shall compare their separate opinions, hear each other's reasons, and agree upon a result, is more to be relied upon as coming at the true value, than the judgment of any of them, or of any individual. This was done by the appraisers on the part of the prosecution. It is thus that juries make up their verdicts. When they retire to their room, there is generally a variety of opinions, but on comparing their opinions and hearing each other's reasons, they come to a result in which they all agree, and which is more to be depended upon than any of the separate opinions.

Supposing that you shall find that these goods are undervalued in the invoices, how are you to decide upon the fraudulent interest or design? In doing this you will be influenced by the extent of the undervaluation. Is it enough to have been a temptation to fraud; could it on a large business afford a great profit? Does it run generally through all the invoices, or is it only an occasional undervaluation, that might have happened by accident, by mistake, without any design? These and other circumstances will suggest them to yourselves on this question of intent. But you will not overlook the conduct of the parties at the time of the seizure. Was it that of upright men in the lawful pursuit of their lawful business? I will not enlarge upon this part of the case. You have heard much of it, and I doubt not will judge of it rightfully. Neither refusing it its fair and reasonable influences, nor pressing it to an unjust extremity. On this question of fraudulent intention, you cannot put aside the circumstance so often mentioned, and which indeed meets the claimants and frowns upon them at every turn of their case, in every path by which they would escape, their declining or omitting to show the actual cost of these goods, their orders for the importation, their correspondence with the persons in England from whom they were brought; in short, every document relating to the purchase, which had a tendency to show the truth and honesty of the legislation.

Finally:

As to the 1 and 2 counts, I have told you that I think they have not been sustained by the evidence, and that on them your verdict should be for the claimants.

The 3d count. If you shall be of opinion that these goods were

found concealed, as charged, and that the duties on them had not been paid or secured, by which you are to understand the whole amount of duties legally chargeable upon them according to their actual cost and value; in that case the goods are forfeited, and the verdict should be for the United States.

The 4, 3, and 10 counts, are founded on the 66 § of the act of 1799, which not being repealed, the verdict on these counts should go for the United States, provided, that on the evidence you shall believe that the goods were entered in the office of the collector of New York, and were not invoiced according to the actual cost thereof at the place of exportation, with design to evade the duties thereupon, or any part thereof.

The 6 count is founded on the 4 § of the act of 1830, as are also the 8 and 11 counts. If, on the evidence, you shall believe that the invoices were made up with intent, by a false valuation or extension, to evade or defraud, your verdict on these counts should be for the United States.

The 5 count charges that each and every of the packages, and each and every of the invoices, were made up with intent, by a false valuation, to defraud the revenue, and if you shall so find them, the verdict should be for the United States.

The 9 and 13 counts are founded on the 14 § of the act of 1832. If, on the evidence, you shall believe that the packages were made up with intent to evade or defraud the revenue, your verdict should be for the United States.

The 7 and 12 counts contain a similar charge under the 4 § of the act of 1830, it being laid in these counts that the packages were made up with intent, by a false valuation, to evade and defraud the revenue.

You will observe that many of the counts are substantially the same, varying only in form, or the manner of laying the offence. With the exception of the count for concealment, they may be resolved into these general charges: That the goods were not invoiced according to their actual cost, with a design to evade the duties; that the packages were made up with intent, by a false valuation, to defraud the revenue; that the invoices were made up with that intent; that the packages were made up with intent to evade or defraud the revenue. This interesting cause will now be committed to you. Seldom has any jury had submitted to them one of equal importance. If, as you have heard, there has been a combination anywhere to defraud your revenue, and depress the honest business and industry of your fellow citizens, you will be happy to be instrumental in punishing the offenders and breaking it up. On the other, if the claimants have had no lot or part in any such combination or practices, it will give you equal pleasure to say so by your verdict.

The return to the within writ appears by the schedule annexed.

FRANCIS HOPKINSON,
Clerk circuit court U. S.

Filed, Oct. 26, 1843.